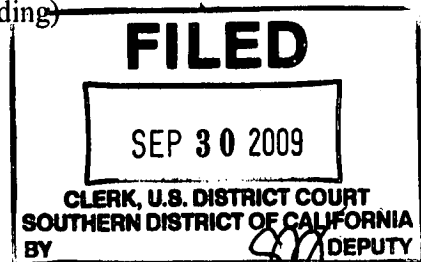


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13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15 RORY W. COLLINS, individually and on  
16 Behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 GUITAR CENTER, INC., and  
20 NATIONAL ASSOCIATION OF  
21 MUSIC MERCHANTS, INC.,

22 Defendants.

23 '09 CV 2151 JAH — JMA

24 CLASS ACTION COMPLAINT

25 DEMAND FOR JURY TRIAL

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1 Plaintiff, Rory W. Collins (the "Plaintiff"), for his Class Action Complaint against  
2 Defendants, upon personal knowledge as to facts pertaining to himself and upon information and  
3 belief as to all other matters, state as follows:  
4

### 5 I. NATURE OF ACTION

6 1. Plaintiff, a consumer and a direct purchaser of Martin Guitar strings ("Martin  
7 Strings") from Guitar Center, Inc., one of the defendants herein, brings this action on his own  
8 behalf and on behalf of a class of purchasers of fretted musical instrument products such as  
9 acoustic and electric guitars, violins, amplifiers and strings ("FI Products") between January 1,  
10 2005 and December 31, 2007.  
11

12 2. Plaintiff seeks damages from Defendants under Section 1 of the Sherman Antitrust  
13 Act, 15 U.S.C. § 1. As detailed below, Plaintiff alleges that Guitar Center, a dominant, multi-  
14 brand retailer and a member of the National Association of Music Merchants ("NAMM"), together  
15 with NAMM and its members, conspired to maintain, implement and/or enforce Minimum  
16 Advertised Pricing ("MAP") policies that had the purpose and effect of fixing prices, securing  
17 higher price levels, restricting retail price competition and eliminating price discounting altogether  
18 in the Fretted Instrument ("FI") market.  
19

20 3. Specifically, from at least 2005-2007, and earlier, NAMM organized meetings and  
21 programs where competing FI retailers, including Guitar Center, were permitted and encouraged  
22 to discuss and agree regarding the restriction of retail price competition, strategies for the  
23 adoption, implementation, and enforcement of minimum advertised price policies, and appropriate  
24 and optimal retail prices and margins. In effect, NAMM facilitated resale price maintenance  
25 ("RPM") agreements between and among its members (hereinafter, MAP and RPM are used  
26 interchangeably).  
27  
28

1           4.       The NAMM meetings led to agreements between Guitar Center, other leading FI  
2 retailers, and FI Product manufacturers to impose RPM scheme designed to raise and maintain  
3 retail prices for FI products.

4  
5           5.       Defendants' conduct unreasonably restrained trade in the relevant market(s)  
6 (defined below), causing substantial anti-competitive effects and inflated prices to consumers, in  
7 violation of § 1 of the Sherman Act.

8           6.       NAMM's conduct and that of other defendants named herein, all of whom are  
9 members of NAMM, are illegal under Section 1 of the Sherman Act. The conduct of defendants,  
10 and each of them unreasonably restrained trade in the relevant market(s) (defined below), causing  
11 substantial anti-competitive effects and inflated prices to consumers.

12  
13           7.       Absent defendants' anti-competitive conduct, plaintiff and the other Class members  
14 would have paid lower prices for the FI Products they purchased during the Class Period. Plaintiff  
15 thus seeks damages and equitable relief under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§  
16 15(a) and 26, for violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

## 18                                   II.       JURISDICTION AND VENUE

19           8.       The Court has jurisdiction over the claims relating to violations of the Sherman  
20 Antitrust Act of 28 U.S.C. §§ 1331 and 1337 and 15 U.S.C. § 15. Jurisdiction is also proper under  
21 28 U.S.C. § 1332(d)(2).

22  
23           9.       Venue is proper in this judicial district under 15 U.S.C. § 22 and 28 U.S.C. § 1391.  
24 Defendants transact business within this district, many of the acts and events giving rise to this  
25 action occurred within this district; and Defendant NAMM is headquartered in this district.  
26  
27  
28

### III. PARTIES

10. Plaintiff Rory W. Collins is a resident of Indianapolis, Indiana. In or about the time period of 2005 - 2007, Plaintiff purchased several sets of Martin Strings from Guitar Center.

11. Defendant Guitar Center, Inc. ("Guitar Center") is a Delaware corporation with its principal place of business at 5795 Lindero Canyon Road, Westlake Village, California, and is a retail seller of FI Products. Guitar Center is a member of NAMM. Guitar Center has grown aggressively through acquisitions. As of the end of 2008, Guitar Center's annual sales of \$1.55 billion were more than one-fifth of the annual sales of all musical instruments of \$7 billion. Guitar Center is the only national chain and is viewed as dominant in the retail market with 295 stores and the industry's largest mail order operation. Guitar Center was nearly five times the size of its nearest competitor by 2007. From 1997 to 2007, its market share grew from 6.1% to 26.6%.

12. Guitar Center is, according to its own publicly filed financial reports in 2007, the largest customer of many of its suppliers and thus each manufacturer depends on Guitar Center for substantial portion of its sales of guitars.

13. Defendant National Association of Music Merchants, Inc. ("NAMM") is a New York corporation with its principal place of business located at 5790 Armada Drive, Carlsbad, California 92008.

14. NAMM is a trade association comprised of more than 9,000 members, including defendants, that includes manufacturers, distributors, and dealers of musical instruments and related products. Most United States manufacturers, distributors, and dealers of musical instruments are members of NAMM. NAMM is controlled by its members, including defendants herein.

1           15.     The musical instrument product market is characterized by significant barriers to  
2 entry which enhances Guitar Center's dominance and influence and allowed defendants to  
3 exercise and maintain control over prices of fretted instruments.

4  
5           16.     Plaintiff is informed and believes and thereon alleges that as to all transaction  
6 relevant herein, each defendant was an agent of one or more defendants named herein and, as  
7 such, was acting within the purpose, course and scope of such agency. Plaintiff is further  
8 informed and believes that each defendant aided and abetted, and acted in concert with and/or  
9 conspired with each and every defendant to commit the acts complained of herein and to engage in  
10 a course of conduct in the business practices complained of herein.

11  
12           17.     Various individuals, partnerships, corporations and associations not named as  
13 defendants in this Complaint have participated as co-conspirators in the violations of law alleged  
14 herein and have performed acts and made statements in furtherance thereof. The identity of all co-  
15 conspirators is unknown at this time and will require discovery.

#### 16 17                   IV.     INTERSTATE TRADE AND COMMERCE

18           18.     The activities of Defendants, as described in this Complaint, were within the flow  
19 of, and substantially affected, interstate commerce.

20           19.     During the time period covered by this Complaint, Defendant Guitar Center and  
21 members of Defendant NAMM sold and distributed FI Products throughout the United States.

22           20.     Defendant Guitar Center and members of Defendant NAMM have sold and shipped  
23 substantial quantities of FI Products in a continuous and uninterrupted flow of interstate commerce  
24 to customers located in states other than the states in which the Defendants and NAMM's  
25 members produced FI Products.  
26  
27  
28

V. SUBSTANTIVE ALLEGATIONS

A. During the Class Period, NAMM was the Industry's Vehicle to Control Prices in the United States Fretted Instrument Product Market

21. Most U.S. manufacturers, distributors, and dealers of musical instruments are members of NAMM. As the FTC observed in its March 4, 2009 press release entitled *National Association of Music Merchants Settles FTC Charges of Illegally Restraining Competition*, "NAMM serves the economic interests of its members by, among other things, promoting consumer demand for musical instruments, lobbying the government, offering seminars, and organizing trade shows. In the United States, NAMM sponsors two major shows each year, where manufacturers introduce new products and meet with dealers and competing manufacturers, distributors and retailers of musical instruments meet and discuss issues of concern to the industry." See <http://www.ftc.gov/opa/2009/03/namm.shtm>.

22. On information and belief, from the late 1990s to at least 2007, Defendants worked to facilitate uniform agreements both as to the implementation and enforcement of MAP as well as pricing. The purpose of facilitating agreement both as to MAP policies and pricing was because Guitar Center, as well as other retailer members of NAMM, were concerned about increased competition by mass merchants, such as Wal-Mart and Costco, as well as internet retailers.<sup>1</sup>

23. NAMM held biannual trade shows and conventions. NAMM shows are considered an indispensable resource by music product retailers. In a February 2007 interview a member was quoted in Musical Merchandise Review:

Many years ago, the importance of attending a NAMM show may not have seemed important, today it is absolutely necessary. Owners and key personnel should be at NAMM . . . the education

---

<sup>1</sup> "Exhibitors Speak: candid comments on business, the NAMM show, dealers and what to expect in 2006," Music Trades (March 1, 2006); "Justified Optimism or rose-colored glasses?" Music Trades (March 1, 2006). See also FTC Complaint, ¶ 4.

1 seminars are priceless. The interaction with the industry people and  
2 colleagues is also priceless.

3 24. In the late 1990s or early 2000s, at a NAMM show, "a high-profile retailer  
4 delivered a stinging address, lamenting the fact that manufacturers sat by idly as price wars raged  
5 and retail profits plummeted."<sup>2</sup> This address coincided with the adoption of MAP policies by  
6 leading musical instrument manufacturers, which commenced in 1999 and continued thereafter.<sup>3</sup>  
7

8 25. By the early 2000s, several major music retail chains, including Guitar Center,  
9 were expressing a heightened concern for margin and profit protection.

10 26. According to independent retailers, Guitar Center wields enormous power in the  
11 industry. In an interview in Musical Merchandise Review, April 2007 issue, Alan Levin of Chuck  
12 Levin's Washington Music Center said:  
13

14 The biggest concern is Guitar Center. They are many  
15 manufacturers' biggest customers and changes are being made . . . to  
suit them alone.

16 Similarly, one NAMM member observed: "Guitar Center has too much leverage. . ."<sup>4</sup>  
17

18 27. Thus, when Guitar Center and NAMM encouraged and required the  
19 implementation of MAP pricing, manufacturers did so for fear of losing Guitar Center as a  
20 customer.

21 28. In fact, a major shift in retail opinion regarding the effectiveness of MAP policies  
22 to protect profits occurred between 2000 and 2001. A poll conducted by Music Trades magazine  
23 revealed that:  
24

---

25  
26 <sup>2</sup> "Do MAP policies work?" Music Trades (August 1, 2001).

27 <sup>3</sup> FTC Complaint, ¶ 4.

28 <sup>4</sup> As reported in the March 1, 2008 issue of Music Trades.



1 Last year [2000] when we polled leading m.i. dealers about the  
 2 value of minimum advertised price (MAP) policies, only 31% said  
 3 they had a positive effect on gross margins, 60% said that MAP had  
 4 no effect at all on selling prices, while 9% said the programs  
 5 actually decreased margins. When asked the same question this year  
 6 [2001], retailers expressed a major change of heart. 51% said that  
 7 MAP policies had improved their gross margins during the past 12  
 8 months, and only 44% deemed the policies ineffectual.<sup>5</sup>

9 29. Music Trades concluded that the 20-point shift in opinion was due to the fact that  
 10 "the biggest benefit of MAP policies has been to rid the internet of loss-leader pricing." Music  
 11 Trades explained:

12 As a result [of the MAP policies], these days when you type the  
 13 name of a popular product into a search engine, you'll get a screen  
 14 full of results offering the same MAP regulated price. As our poll  
 15 indicates, brick-and-mortar retailers obviously appreciate the fact  
 16 that they don't have to deal with a legion of customers coming into  
 17 the store brandishing a computer print out and demanding, 'Why  
 18 can't you beat this price?'<sup>6</sup>

19 30. In addition to reducing competition from internet retailers, Music Trades also  
 20 credited MAP policies with a more "sane approach to industry pricing," stating that "retail  
 21 margins appear to have stabilized."<sup>7</sup>

22 31. Thus, MAP policies were a hot topic at the January 2001 NAMM trade show.  
 23 Music Trades reported that retailers' then-current gross margins of 27% to 32% were far lower  
 24 than they had been in the 1990s, and that both large and small retailers "have jointly concluded  
 25 that they simply can't afford to give up any more gross margin points."<sup>8</sup>

---

26 <sup>5</sup> "Do MAP policies work?" Music Trades (August 1, 2001).

27 <sup>6</sup> "Do MAP policies work?" Music Trades (August 1, 2001).

28 <sup>7</sup> "Do MAP policies work?" Music Trades (August 1, 2001).

<sup>8</sup> "Brick and Mortar Gets New Respect," Music Trades (March 1, 2001)

1           32. In response to this joint retailer pressure, at the January 2001 NAMM show,  
 2 “manufacturers seemed to be doing more than paying lip service to retail profit concerns” by  
 3 rolling out new and more restrictive MAP policies. However, on information and belief, the  
 4 manufacturers realized and agreed that the MAP policies were not designed to increase services at  
 5 the retailers but merely to protect their profit margins. In fact, manufacturers allegedly “were  
 6 fulsome in their criticisms of the industry’s retail network,” stating, *inter alia*: “They don’t do  
 7 any marketing,” and “Their stores are staffed with minimum wage idiots.”<sup>9</sup>

8  
 9  
 10           33. Thus, the result of the January 2001 NAMM show, and the discussion facilitated by  
 11 NAMM at that show, was that manufacturers realized that they could no longer rely on brilliant  
 12 engineering and design, but instead agreed to implement “[a] distribution scheme that enables  
 13 retailers to make a respectable gross margin. . .”<sup>10</sup>

14           34. At the January 2002 NAMM show, NAMM continued to facilitate discussion  
 15 among its members on the optimal use of MAP policies. As a result, manufacturers  
 16 “acknowledged the retail concern with profitability by instituting minimum advertised price, or  
 17 MAP policies. In fact, mention of MAP pricing was routinely included in just about every new  
 18 product presentation.”<sup>11</sup>

19  
 20           35. At these shows, on information and belief, NAMM encouraged dealers to, and  
 21 dealers agreed to and did, outline their MAP policies. But the dealers did not do so in conjunction  
 22 with requests for retailer advertising, in-store displays, better product demonstrations or  
 23

24  
 25  
 26 <sup>9</sup> “Brick and Mortar Gets New Respect,” Music Trades (March 1, 2001)

27 <sup>10</sup> “Brick and Mortar Gets New Respect,” Music Trades (March 1, 2001)

28 <sup>11</sup> “Blue skies ahead? Expectations were low, but Christmas sales came in strong, and retailers flocked to Anaheim, making for a high energy show . . . Does this mean the recession is over and industry growth is back on track?; NAMM in Anaheim 2002.” Music Trades (March 1, 2002).

1 knowledgeable store staff. Rather, the MAP policies were agreed to at the behest of Defendants  
2 and rolled out at the NAMM shows with the retailer profitability in mind.

3           36. For example, at the Summer 2004 NAMM show, “[a] number of exhibitors also  
4 announced higher MAP prices in a bid to shore up dealer margins. As one supplier noted, ‘The  
5 truth is, there isn’t a lot of difference between our products and our competitors. If we’re going to  
6 get dealer support, we’ve got to make these guys money.’”<sup>12</sup>

7  
8           37. Similarly, at the NAMM show in summer 2005, Peavey Electronics (among others)  
9 outlined its MAP policy, reiterating “Peavey’s commitment to dealer profitability.”<sup>13</sup>  
10

11           38. But NAMM did not only encourage individual dealers or retailers to discuss and  
12 agree how to restrict price competition. In fact, it facilitated joint discussions by all members of  
13 NAMM. At NAMM’s biannual trade shows and conventions, NAMM hosted “NAMM Show  
14 University Sessions.” These sessions were designed to facilitate discussion and education on a  
15 wide variety of music industry topics, including price competition and restrictions to competition.  
16

17           39. At the January 2006 trade show, NAMM hosted several sessions regarding MAP  
18 policies.

19           40. For example, NAMM facilitated a panel discussion regarding MAP policies. On a  
20 panel comprised of industry heavy-hitters, such as the Vice President and General Manager of  
21 Yamaha’s Pro-Audio and Combo division, sales managers from Kaman Music Corp. and Avedis  
22

23  
24  
25  
26  
27 <sup>12</sup> “NAMM’s grand finale in Nashville: strong buying, product shortages, exuberant entertainment, and  
28 confidence in the second half made the last NAMM show in Nashville one to remember; Nashville NAMM  
Report 2004,” Music Trades (September 1, 2004).

<sup>13</sup> “Peavey 40<sup>th</sup> anniversary dealer meeting,” Music Trades (September 1, 2005).

1 Zildjian, and several retailers, the suppliers were “unanimous, offering a guardedly positive  
2 assessment of MAP policies.”<sup>14</sup>

3  
4 41. At this panel, there was just one lone voice that supported competition on prices.  
5 Bryan Junk of massmusic.net asked that Panel and the audience, “We’re supposed to compete,  
6 aren’t we?” According to one industry report of the Panel session:

7 Whether or not you agree with him, Bryan Junk, an internet retailer,  
8 deserves credit for staring down an auditorium packed with  
9 independent retailers and stating that MAP should be scrapped. To  
10 audible boos, he declared, ‘Consumers like low prices, and we try to  
11 give them what they want. Why shouldn’t we be able to grow our  
12 business by offering the lowest possible prices without interference  
13 from the manufacturers?’

14 42. However, Mr. Junk’s view was not the consensus. In fact, the Panel discussed that,  
15 absent MAP, “prices would rapidly migrate down to 10% over cost . . .” The Panel even  
16 advocated revising the current MAP prices “upwards to give retailers a better profit margin.”

17 43. The Panel also discussed how to enforce the MAP policies, agreeing that “MAP is  
18 only as effective as its enforcement . . .” The Panel thus discussed how to enforce MAP,  
19 particularly with the proliferation of Internet sites.

20 44. NAMM also released a report based on comments it compiled from the January  
21 2006 trade show participants and attendees. NAMM released the following poll results, in which  
22 it provided the answers:<sup>15</sup>

23 What do independent retailers view as a threat to their business and  
24 profitability? On a 1 to 5 scale, with 5 being extremely concerned,  
25 rate the following issues. (Report is average of responses.)  
26

---

27 <sup>14</sup> “MAP policies on trial: Do they help? Do they hurt? Is there a better way?” Music Trades (March 1,  
28 2006).

<sup>15</sup> “Justified Optimism or rose-colored glasses?” Music Trades (March 1, 2006).

3.4 The expanded presence of music products in mass merchants, like Wal-Mart and Costco.

3.2 Competition from internet and catalog merchants.

\* \* \*

2.5 MAP pricing policies that set margins too low.

45. NAMM hosted another session entitled, "Does the Industry Need a MAP makeover?" At this session, Music for Everyone ("MFE"), a California retailers association, presented a "voluntary MAP formula/guideline" which it "recommended for general use . . ."<sup>16</sup>

46. MFE published, and presented at the January 2006 NAMM trade show with NAMM's participation and consent, the following two pricing formulas based on retail cost and which were "designed for all instruments and all combo and audio products"<sup>17</sup>:

Proposed MAP Formula  
Recommended Minimum Profit Formulas for A & B Discounts

\* \* \*

Retail [\$1-\$149] x 0.5 x 2.00 = MAP (0% off retail)\*  
Retail [\$150-\$249] x 0.5 x 1.90 = MAP (5% off retail)\*  
Retail [\$250-\$299] x 0.5 x 1.85 = MAP (7.5% off retail)\*  
Retail [\$300-\$349] x 0.5 x 1.80 = MAP (10% off retail)\*\*  
Retail [\$350-\$399] x 0.5 x 1.75 = MAP (12.5% off retail)\*\*  
Retail [\$400-\$449] x 0.5 x 1.70 = MAP (15% off retail)\*  
Retail [\$450-\$499] x 0.5 x 1.65 = MAP (17.5% off retail)\*\*  
Retail [\$500 and up] x 0.5 x 1.60 = MAP (20% off retail)\*  
Retail [\$550-\$599] x 0.5 x 1.55 = MAP (22.5% off retail)\*\*  
Retail [\$600 and up] x 0.5 x 1.50 = MAP (25% off retail)\*\*

\* Formula A

\*\* Formula B

<sup>16</sup> "Marketplace realities demand new approach to MAP policies: with fixed costs the same on all merchandise, a sliding pricing scale makes sense," Music Trades (November 1, 2005).

<sup>17</sup> "Marketplace realities demand new approach to MAP policies: with fixed costs the same on all merchandise, a sliding pricing scale makes sense," Music Trades (November 1, 2005).

1  
2 47. MFE explained that the formulas were designed to permit “[f]ormula discounts  
3 from retail start[ing] at zero” and to provide a “much higher” profit percentage for lower-priced  
4 products.”<sup>18</sup>

5 48. MFE even went so far at the NAMM show to encourage manufacturers to adopt the  
6 MAP pricing reflected in Formula A, capping permitted discounts at 20% and stating that Formula  
7 A “is likely to be . . . accepted widely.” Nonetheless, MFE stated that no MAP pricing should be  
8 lower than that reflected in Formula B, stating “the formula B profits are the minimum that brick-  
9 and-mortar full service music instrument retailers require to survive, and hopefully thrive.”<sup>19</sup>

10  
11 49. At the 2006 Summer NAMM show, NAMM again held an industry panel  
12 discussion, comprised of the NAMM president, a vice president of Yamaha, and the Chairman and  
13 CEO of Fender Musical Instruments, among others.<sup>20</sup> NAMM touted this roundtable as follows:  
14 “In the two-hour session suppliers and retailers of all sizes will be able to share views about  
15 critical issues affecting profitability, including MAP pricing, Internet sales tax, and the entrance of  
16  
17  
18  
19  
20  
21

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22 <sup>18</sup> “Marketplace realities demand new approach to MAP policies: with fixed costs the same on all  
23 merchandise, a sliding pricing scale makes sense,” Music Trades (November 1, 2005).

24 <sup>19</sup> “Marketplace realities demand new approach to MAP policies: with fixed costs the same on all  
25 merchandise, a sliding pricing scale makes sense,” Music Trades (November 1, 2005).

26 <sup>20</sup> “Austin goes all out for NAMM: Austin got high marks as a fabulous trade show venue, but attendance  
27 levels barely made a passing grade. Nevertheless, the industry still seems committed to a summer show.  
28 The only question, were to have it; Part 2; Company review,” Music Trades (September 1, 2006).

1 mass consumer merchandisers into the industry.”<sup>21</sup> Among the topics facilitated at this meeting  
 2 were MAP prices that were set too low and profit margins.<sup>22</sup>

3 50. NAMM continued to facilitate industry discussions of MAP pricing at its 2007  
 4 Winter show. One roundtable discussion focused on, *inter alia*, increasing profit margins and  
 5 MAP pricing.<sup>23</sup>

7 51. Thus, NAMM organized meetings and programs for its members at which  
 8 competing retailers of musical instruments, as well as manufacturers of those instruments, were  
 9 permitted and encouraged to exchange information and discuss strategies for implementing  
 10 minimum advertised price policies, the restriction of retail price competition, and the need for  
 11 higher retail prices.

13 52. Representatives of NAMM determined the scope of information exchange and  
 14 discussion by selecting moderator and setting the agenda for these programs.

16 53. At these NAMM-sponsored events, NAMM members discussed the adoption,  
 17 implementation, and enforcement of minimum advertised price policies; the details and workings  
 18 of such policies; appropriate and optimal retail price and margins; and other competitively  
 19 sensitive issues.

20 **B. No Legitimate Business Reason for MAP Policies, Price Restrictions and Restrictions**  
 21 **on Discounting**

---

24 <sup>21</sup> “Get ready for a memorable show as the world’s live music capital hosts NAMM; NAMM PREVIEW:  
 25 Summer Session In Austin,” Music Trades (July 1, 2006).

26 <sup>22</sup> “Austin goes all out for NAMM: Austin got high marks as a fabulous trade show venue, but attendance  
 27 levels barely made a passing grade. Nevertheless, the industry still seems committed to a summer show.  
 The only question, where to have it; Part 2, Company overview,” Music Trades (September 1, 2006).

28 <sup>23</sup> “Why going to NAMM is a total no-brainer: new products, smart people, and tons of educational  
 sessions add up to the single biggest opportunity of the year. If you’re serious, there’s only one thing to do:  
 Show Up!; NAMM 2007 PREVIEW; Calendar,” Music Trades (January 1, 2007).



1           54.     Relative to Guitar Center and other retail members of NAMM, internet based  
2 retailers are small companies that compete in the relatively new trade channel known variously as  
3 “electronic commerce,” “e commerce,” “e tailing,” “internet retail,” etc. Internet retailers of FI  
4 products are highly efficient competitors because, among other reasons, their operating expenses  
5 are low. This allows them to compete vigorously on price, both with other internet retailers and  
6 with retailers in other trade channels, such as Guitar Center (which operates through “brick and  
7 mortar” stores as well as on the internet). Thus, when allowed to compete freely, internet  
8 retailers’ price competition enhances consumer welfare by bringing down prices.

9  
10  
11           55.     By the 2000s, NAMM and its members recognized that the increased popularity of  
12 “e-commerce,” with its associated increase in price competition, posed a substantial threat to  
13 NAMM’s members’ sales and profits. Thus, NAMM, whose retail members are generally  
14 considered “traditional” brick-and-mortar retailers because they primarily sell products through  
15 their physical store locations, considered ways to thwart internet retailer competitors.

16  
17           56.     NAMM’s, and its members’, response to internet retailing was both predictable and  
18 anticompetitive. As recognized at an FTC 2002 public workshop, entitled “Possible  
19 Anticompetitive Efforts to Restrict Competition on the Internet,” one expert explained:

20                   The promise of the world of electronic commerce is to create an  
21 environment where consumers can freely shop between various  
22 competitive alternatives. **By reducing transaction costs and**  
23 **improving transparency, the Internet offers the potential of**  
**dramatically improving competition in various retail markets.**

24                                   \*       \*       \*

25                   **[But] as new market forces arise, . . . “traditional” competitors**  
26 **often respond to the threat by trying to create barriers to thwart**  
27 **those new entrants.**  
28



1 See David A. Balto, Testimony Before the FTC, Office of Policy Planning, Public  
2 Workshop on E-Commerce, at 1-2 (October 10, 2002) (emphasis added).

3 57. Just as the experts predicted, NAMM encouraged its members to devise an illegal  
4 plan to combat internet retailers by exacting agreements from the manufacturers of FI products  
5 being sold through Guitar Center and NAMM members' stores (or that desired to sell products at  
6 their stores) to require, on penalty of termination and as a condition of doing business with them,  
7 that the manufacturer ensure that its other retailers refrain from discounting.

8  
9 58. NAMM facilitated the discussion of, and sought and obtained the agreement of its  
10 manufacturer members, to impose and enforce MAP policies solely for Guitar Center and its retail  
11 members' benefit and not for any legitimate pro-competitive reason.

### 12 13 **C. The FTC Action**

14 59. In March 2009, the Federal Trade Commission ("FTC") issued a cease and desist  
15 order to NAMM and at the same time settled the FTC's charges that NAMM had "permitted and  
16 encouraged" acts constituting violations of Section 5 of the FTC Act among its members and that  
17 the acts and practices of NAMM "constitute unfair methods of competition in or affecting  
18 commerce in violation of Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C.  
19 § 45." The FTC also alleged that absent appropriate relief "such acts and practices, or the effects  
20 thereof will continue or recur . . ."

21  
22 60. Specifically, the FTC, after an investigation, alleged that between 2005 and 2007,  
23 NAMM organized various meetings and programs for its members, such as defendants herein, at  
24 which competing retailers of musical instruments were permitted and encouraged to exchange  
25 competitively sensitive information, strategies for implementing minimum advertised pricing and  
26 restrictions of retail price competition.  
27  
28

1           61.     The FTC alleged that the “challenged conduct served no legitimate business  
2 purpose and resulted in no significant efficiency benefits.”

3           62.     According to the FTC’s press release announcing NAMM’s settlement of “FTC  
4 Charges of Illegally Restraining Competitions” “the FTC’s proposed consent order is designed to  
5 remedy NAMM’s anti-competitive conduct.” The Commission’s vote to accept the complaint and  
6 the consent order was 4-0.

7           63.     According to the FTC’s complaint, “at meetings and programs sponsored by  
8 NAMM, competing retailers of musical instruments and other NAMM discussed strategies for  
9 raising retail prices and exchanged information on competitively sensitive subjects such as prices,  
10 margins, minimum advertised price policies and their enforcement.”

11                   According to the FTC, similar discussions were held among  
12 manufacturers.

13           64.     The conduct of the defendants was the cause of *supra* competitive price levels for  
14 products in the Fretted Instrument product market. Music Merchandise Review, issue date  
15 October 2008, reported that Anthem Music Group’s head D. Kilkenny observed “over the past  
16 several years instrument prices seem to be increasing at a greater rate than that of inflation . . .”  
17 According to The Music Trades “Annual Census of The Music Industries” published in 2009, in  
18 2006, the average price of a guitar was \$309, by 2007 the average price was \$350 and by 2008 the  
19 average price was \$372. Thus, the defendants were able to increase aggregate sales from  
20 \$1,022,861.00 in 2006 to 41,151,290.00 despite a 10% decline in unit sales.  
21

22           65.     The FTC has alleged that no significant pro-competitive benefit was derived from  
23 the challenged conduct. After analyzing the type of information involved, the level of detail, the  
24 absence of procedural safeguards, and overall market conditions, the FTC concluded that the  
25 exchange of information engineered by NAMM lacked a pro-competitive justification.  
26  
27  
28

1           66.     The FTC has ordered NAMM to cease and desist from:

2                   (a)     Entering into, adhering to, enforcing, urging, encouraging, advocating,  
3 suggesting, assisting or otherwise facilitating any Musical Product Manufacturer or Musical  
4 Product Dealer to enter into, adhere to or enforce any combination, conspiracy, agreement or  
5 understanding between or among any Musical Product Manufacturers of Musical Product Dealers  
6 relating to:

7  
8                           (i)     the retail price of any Musical Product;

9                           (ii)    any term, condition or requirement upon which any Musical Product  
10 Manufacturer or Musical Product Dealer deals, or is willing to deal, with any other Musical  
11 Product Manufacturer or Musical Product Dealer, including, but not limited to, Price Terms,  
12 margins, profits, or pricing policies, including but not limited to Minimum Advertised Price  
13 Policies or Resale Price Maintenance Policies; or

14                           (iii)   the refusal to do business, or the reduction of business, with  
15 particular Musical Product Manufacturers or Musical Product Dealers.

16                   (b)     Urging, encouraging, advocating, suggesting, coordinating, participating in,  
17 or facilitating in any manner the exchange of information between or among Musical Product  
18 Manufacturers or Musical Product dealers relating to:

19                           (i)     the retail price of Musical Products; or

20                           (ii)    any term, condition or requirement upon which any Musical Product  
21 Manufacturer or Musical Product Dealer deals, or is willing to deal, with any other Musical  
22 Product Manufacturer or Musical Product Dealer, including but not limited to, Price Terms,  
23 margins, profits, or pricing policies, including but not limited to Minimum Advertised Price  
24 Policies or Resale Price Maintenance Policies.

1 **D. Anti-Competitive Effects of Defendants' Unlawful Conduct**

2 67. The MAP policies imposed and enforced by Defendants here went well beyond  
3 typical cooperative advertising programs where manufacturers place restraints on the prices  
4 dealers may advertise in advertisements funded in whole or in part by the manufacturer.  
5

6 68. The MAP policies inflicted on music retailers by NAMM and manufacturers are  
7 anti-competitive. According to a WALL STREET JOURNAL Report dated October 23, 2008, Bradley  
8 Reed, sales manager for Musician's Advocate, Inc. said "it [his company] had very little choice  
9 but to honor manufacturer's policies on advertised prices because otherwise it risks having its  
10 supplies cut off or being delisted as an authorized distributor."  
11

12 69. In large part, NAMM's concerted efforts were successful. Despite that fact that  
13 NAMM and its members expressed their fear at the January 2001 NAMM trade show that the  
14 then-current gross margins of 27% to 32% would be chipped away even further by price  
15 competition, a Music Trades report published in 2008 provided that the music industry had gross  
16 margins of 30% versus approximately 22% gross margins for consumer electronics.  
17

18 70. Defendants' practices have had the following anti-competitive effects, among  
19 others, in the relevant market:

20 (a) Competition in the relevant market has been unreasonably restrained,  
21 suppressed, and, in some cases, destroyed;  
22

23 (b) Potential competitors have been restrained from entering into the relevant  
24 market and have been prevented from competing effectively against defendants;

25 (c) Purchasers of musical instruments have been denied the benefits of  
26 competition in a free and open market and have been forced to pay artificially high instrument  
27 prices;  
28

1 (d) Upon information and belief, defendants have enjoyed and will continue to  
2 enjoy, ultra competitive profits to the detriment of competitors and purchasers of musical  
3 instruments.  
4

5 71. The aforementioned anti-competitive effects of defendants conduct on competition  
6 in the relevant market outweigh any conceivable pro-competitive benefits.

7 **E. Relevant Market**

8 72. The relevant product market in this case is retail sales of products in the fretted  
9 instruments product category which includes guitars, amplifiers and accessories for the same.  
10

11 73. The relevant geographic market in this case is the United States of America.

12 74. By virtue of their power to control prices and exclude competition in the relevant  
13 market(s), Defendants at all relevant times possessed market power in the relevant market(s).  
14 Moreover, at all relevant times Defendants possessed dominant shares of the market(s) for retail  
15 sales of musical instruments generally fretted instruments in particular.  
16

17 75. Likewise, Defendants at all relevant times possessed substantial market power in  
18 the market(s) for their products, due, in part, to the high level of product differentiation in the  
19 industry. Specifically, Defendants: (a) sold their musical instruments at prices substantially in  
20 excess of marginal costs, (b) enjoyed high profits margins thereon, (c) sold such products  
21 substantially in excess of the competitive price, and (d) enjoyed substantial barriers to market  
22 entry and growth.  
23

24 76. Defendants exchanged competitively sensitive information that had the purpose,  
25 tendency and capacity to facilitate price coordination among competitors.

26 77. There is substantial concentration among the firms that manufacture the products in  
27 the relevant market(s).  
28

1           78. Defendants together imposed and enforced minimum retail price maintenance and  
2 minimum advertised price policies which were contrary to manufacturers' economic interests  
3 because each manufacturer rational economic goal was to increase sales volume rather than  
4 terminate retailers.  
5

6 **F. Market Effects of Defendants' Conduct**

7           79. The overall effect of Defendants' anti-competitive, exclusive scheme has been to  
8 substantially foreclose and impair competition (and the threat of such competition) from lower-  
9 priced musical instruments. As alleged above, had Defendants not improperly foreclosed or  
10 stifled actual or potential competitors from competing in markets for the musical instruments,  
11 other actual or potential rival manufacturers would have achieved much greater sales than they  
12 actually did (or threatened to do), given the cheaper prices that they charged (or could have  
13 charged upon entry), and would have posed a far greater competitive threat to Defendants.  
14 Additionally, absent Defendants' exclusionary conduct, barriers to entry of the markets would  
15 have been lower, which: (a) would have made it easier for existing or new competitors to enter or  
16 expand their positions in the market for the musical instruments, and (b) would have caused  
17 existing or potential competitors to be attracted to the musical instrument market because of the  
18 supra-competitive prices that Defendants were charging. As a result, absent Defendants'  
19 misconduct, Defendants would have rationally perceived that there was a greater threat of  
20 potential competition in each of the relevant markets if Defendants did not reduce its supra-  
21 competitive prices.  
22  
23  
24

25           80. The presence of unfettered competition from actual or potential competitors, which  
26 were selling lower-priced musical instruments, would have forced Defendants to lower the prices  
27  
28

1 for its musical instruments in order to remain competitive and/or to counter a perceived threat of  
2 additional entry.

3           81. As a result of Defendants' conduct, independent retailers could not compete with  
4 nationwide and/or multiregional claims because the retailers could not price-compete.  
5 Accordingly, retailers such as Guitar Center were able to raise prices above and beyond what they  
6 would be under competitive conditions.  
7

8           82. During the relevant period, Plaintiff and the other members of the Class purchased  
9 musical instruments directly from Defendants. As a result of Defendants' alleged illegal conduct,  
10 members of the Class were compelled to pay, and did pay, artificially inflated prices for the  
11 musical instruments they purchased. Plaintiff would have been able to, *inter alia*, purchase less-  
12 expensive musical instruments had potential competitors been able to engage in unfettered  
13 competition. The prices that Plaintiff and the other Class members paid for musical instruments  
14 during the Class Period were substantially greater than the prices that Plaintiff and the Class  
15 members would have paid absent the illegal conduct alleged herein because: (1) the prices of all  
16 musical instruments were artificially inflated by Defendants' illegal conduct; and (2) Class  
17 members were deprived of the opportunity to purchase musical instruments at substantially lower  
18 prices. Thus, Plaintiff and the Class have, as a consequence, sustained substantial damages in the  
19 form of overcharges.  
20  
21  
22

## 23 VI. CLASS ACTION ALLEGATIONS

24           83. Plaintiff brings this action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of  
25 Civil Procedure on behalf of the following Class:

26           All individuals and persons who purchased one or more Fretted  
27 Instrument Products from any of the defendants from January 1,  
28 2005 through December 2007 ("Class Period").

1 Excluded from the Class are the Defendants, their co-conspirators, their respective parents,  
2 subsidiaries and affiliates, any judge or magistrate presiding over this action and members of their  
3 families, as well as any governmental entities.  
4

5 84. Plaintiff does not know the exact size of the Class since such information is  
6 exclusively in the control of Defendants. Plaintiff believes that there are thousands of Class  
7 members, and that they are sufficiently numerous and geographically dispersed throughout the  
8 United States so that joinder of all Class members is impracticable.  
9

10 85. Plaintiff's claims are typical of the claims of the members of the Class because  
11 Plaintiff and all Class members were damaged by the same wrongful conduct of Defendants and  
12 their co-conspirators as alleged in this Complaint.

13 86. Plaintiff will fairly and adequately protect the interests of the Class. The interests  
14 of Plaintiff coincide with and are not antagonistic to, those of the Class. In addition, Plaintiff is  
15 represented by counsel who are experienced and competent in the prosecution of complex class  
16 action and antitrust litigation.  
17

18 87. There are questions of law and fact common to the members of the Class, and those  
19 common questions predominate over any questions that may affect only individual members of the  
20 Class, because Defendants have acted on grounds generally applicable to the entire class. Among  
21 the predominant questions of law and fact common to the Class are:  
22

23 (a) whether Defendants engaged in agreements, contracts, combinations, and  
24 conspiracies, which had the purpose and/or effect of unreasonably restraining competition and  
25 limiting purchaser access to competing and lower-priced FI Products;  
26

27 (b) whether Defendants unreasonably restrained trade;  
28



1 (c) whether Defendants' anti-competitive contracts, combinations, and  
2 conspiracies have caused Plaintiff and the other members of the Class or Subclasses to suffer  
3 antitrust injury in the nature of overcharges;  
4

5 (d) whether Defendants' unlawful conduct caused Plaintiff and the other  
6 members of the Class or Subclasses to pay more for the FI Products than they otherwise would  
7 have paid;

8 (e) the appropriate Class- or Subclass-wide measure of damages; and,

9 (f) whether Defendants' anti-competitive conduct is continuing, thus entitling  
10 the Class or Subclasses to injunctive relief to promote unrestrained trade and free and fair  
11 competition.  
12

13 88. Class action treatment is a superior method for the fair and efficient adjudication of  
14 the controversy, in that, among other things, such treatment will permit a large number of  
15 similarly situated persons to prosecute their common claims in a single forum simultaneously,  
16 efficiently, and without the unnecessary duplication of evidence, effort, and expense that  
17 numerous individual actions would engender. The benefits of proceeding through the class  
18 mechanism, including providing injured persons or entities with a method for obtaining redress for  
19 claims that might not be practicable to pursue individually, substantially outweigh any difficulties  
20 likely to be encountered in management of this class action. There are no difficulties likely to be  
21 encountered in the management of this class action that would preclude its maintenance as a class  
22 action and no superior alternative exists for the fair and efficient adjudication of this controversy  
23 on behalf of Plaintiff and the members of the Class.  
24  
25  
26  
27  
28

**VII. TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT  
CONCEALMENT, AND EQUITABLE TOLLING**

89. Plaintiff did not discover and could not have discovered through the exercise of reasonable diligence the existence of the claims sued upon herein until the FTC issued a press release in March 2009.

90. Any applicable statutes of limitation have been tolled by Defendants' affirmative acts of fraudulent concealment and continuing misrepresentations.

91. Because of the self-concealing nature of Defendants' actions and their affirmative acts of concealment, Plaintiff and the Class or Subclasses assert the tolling of any applicable statutes of limitations affecting the claims raised herein.

92. Defendants continued to engage in the deceptive practice, and consequently, unwary consumers were injured on a daily basis by Defendants' unlawful conduct. Therefore, Plaintiff and the Class or Subclasses submit that each instance that Defendants engaged in the conduct complained of herein and each instance that a member of the Class or Subclasses purchased a FI Product constitutes part of a continuing violation and operates to toll the statutes of limitation in this action.

93. Defendants are estopped from relying upon any statute of limitations defense because of its unfair or deceptive conduct.

94. Defendants' conduct was and is, by its nature, self-concealing. Still, Defendants, through a series of affirmative acts or omissions, suppressed the dissemination of truthful information regarding their illegal conduct, and have actively foreclosed Plaintiff and the Class or Subclasses from learning of their illegal, anti-competitive, unfair and/or deceptive acts.

1           95. By reason of the foregoing, the claims of Plaintiff and the Class or Subclasses are  
 2 timely under any applicable statute of limitations, pursuant to the discovery rule, the equitable  
 3 tolling doctrine, and fraudulent concealment.  
 4

5                                   **FIRST CLAIM FOR RELIEF**  
 6                                   **(Violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1)**

7           96. Plaintiff incorporates by reference all the above allegations as if fully set forth  
 8 herein.

9           97. Beginning in 2005, the exact date being unknown to Plaintiff and exclusively  
 10 within the knowledge of Defendants and their co-conspirators, Defendants and their co-  
 11 conspirators entered into a continuing contract, combination or conspiracy to unreasonably restrain  
 12 trade and commerce in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) by  
 13 artificially reducing or eliminating competition in the United States.  
 14

15           98. In particular, Defendants combined and conspired to raise, fix, maintain or stabilize  
 16 the price of FI Products sold in the United States.

17           99. As a result of Defendants' unlawful conduct, prices for FI Products were raised,  
 18 fixed, maintained and stabilized in the United States.  
 19

20           100. The contract, combination or conspiracy among Defendants consisted of a  
 21 continuing agreement, understanding, and/or concerted action among defendants and their co-  
 22 conspirators.

23           101. For purposes of formulating and effectuating their contract, combination or  
 24 conspiracy, Defendants and their co-conspirators did those things they contracted, combined, or  
 25 conspired to do, including, but in no way limited to:  
 26

27           a. Participating in meetings and conversations to discuss the prices and supply of  
 28 FI Products;

1           b.     Communicating in writing and orally to fix target prices, floor prices and  
2 supply of FI Products;

3           c.     Exchanging competitively sensitive information among each other to facilitate  
4 their conspiracy, including minimum advertised pricing, strategies for raising retail prices,  
5 restricting retail price competition;

6           d.     Agreeing to manipulate prices and supply of FI Products sold in the United  
7 States in a manner that deprived direct purchasers of free and open competition; and,  
8

9           e.     Selling FI Products to customers in the United States at non-competitive prices.  
10

11         102.    As a result of Defendants' unlawful conduct, Plaintiff and the other members of the  
12 Class or subclasses were injured in their business and/or property in that they paid more for FI  
13 Products than they otherwise would have paid in the absence of Defendants' unlawful conduct.  
14

15                                 **PRAYER FOR RELIEF**

16         WHEREFORE, Plaintiff prays that:

17           A.     The court determine that this action may be maintained as a class action pursuant to  
18 Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure with respect to the claims for  
19 damages, and declaring Plaintiff as the representative of the Class and his counsel as counsel for  
20 the Class;

21           B.     The Court declare the conduct alleged herein to be unlawful in violation of the  
22 federal antitrust laws and the common law of unjust enrichment;

23           C.     Plaintiff and each member of the Class recover the amounts by which the  
24 Defendants have been unjustly enriched in accordance with State law;

25           D.     Defendants be enjoined from continuing the illegal activities alleged herein;  
26  
27  
28

1 E. Plaintiff and the Class recover the costs of this suit, including reasonable attorney's  
2 fees and expenses as provided by law; and,

3 F. Plaintiff and the Class be granted such other, further, and different relief as the  
4 nature of the case may require or as may be determined to be just, equitable and proper by this  
5 Court.  
6

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a trial by jury on all claims so triable.  
9

10 DATED: September 28, 2009  
11

12 PRICE WAICUKAUSKI & RILEY, LLC

13  
14 By: 

15 Heather A. Barnes (263107)

16 William N. Riley (IN Bar No. 14941-49) (*pro hac vice* pending)

17 Joseph N. Williams (IN Bar No. 25874-49) (*pro hac vice* pending)

18 PRICE WAICUKAUSKI & RILEY, LLC

19 301 Massachusetts Avenue

20 Indianapolis, Indiana 46204

21 Telephone: (317) 633-8787

22 Facsimile: (317) 633-8797

23 E-Mail: [hbarnes@price-law.com](mailto:hbarnes@price-law.com)

24 [wriley@price-law.com](mailto:wriley@price-law.com)

25 [jwilliams@price-law.com](mailto:jwilliams@price-law.com)  
26  
27  
28

*Attorneys for Plaintiff*

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers or filings as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Rory W. Collins

(b) County of Residence of First Listed Plaintiff Marion County, Ind.  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Price Waicukauski & Riley, LLC  
301 Massachusetts Avenue, Indianapolis, IN 46204

## DEFENDANTS

Guitar Center, Inc. and Nat'l Ass'n of Music Merchants

County of Residence of First Listed Defendant Los Angeles County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

09 CV 2151 JAH

JMA

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY/INTELLECTUAL	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1

Brief description of cause:

Violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Hon. Larry A. Burns

DOCKET NUMBER 3:09-cv-02002-LAB-JMA

DATE

09/28/2009

SIGNATURE OF ATTORNEY OF RECORD

Heather A. Burns

FOR OFFICE USE ONLY

RECEIPT #

5807

AMOUNT

\$350.00

APPLYING IFP

JUDGE

MAG. JUDGE

CP MS 10/01/09



JS 44 Reverse (Rev. 12/07)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS005807  
Cashier ID: msweeney  
Transaction Date: 10/01/2009  
Payer Name: PRICE WAICUKAUSKI LLC

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CIVIL FILING FEE  
For: COLLINS V GUITAR CENTER  
Case/Party: D-CAS-3-09-CV-002151-001  
Amount: \$350.00

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CHECK  
Check/Money Order Num: 8806  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.